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***June, 2005***

***Summary of 2005 Legislative Changes to  
Nevada Ethics in Government Law***

***Assembly Bill 39***

The majority of the provisions of AB 39 relate to local government purchasing laws and contracts entered into under these statutes.

However, AB 39 also requires the Attorney General to defend a state officer or state employee in any proceedings before the Commission on Ethics relating to an ethics complaint. The state officer or employee must submit a written request for counsel to the Attorney General's office, and the Attorney General must determine that the act or omission on which the alleged violation is based appears to be within the course and scope of public duty or employment and must have been performed or omitted in good faith. The requirement to provide counsel is binding on the Attorney General unless the state officer or state employee retains private counsel, or unless the Attorney General tenders the defense of the state officer or state employee to an insurer.

The bill becomes effective July 1, 2005, and is not applicable to ethics complaints submitted prior to July 1, 2005.

***Assembly Bill 64***

Assembly Bill 64 excludes persons elected to the office of supervisor of a conservation district pursuant to NRS 548.285 from the requirement to file a financial disclosure statement under NRS 281.561. The exclusion is retroactive to January 1, 2004, and any civil penalty or fine pending on the effective date of the bill (as a whole, see below) against such an elected supervisor for failing to file a financial disclosure statement is declared void and must not be collected.

Additionally, AB 64 authorizes the Commission on Ethics to either: 1) request representation from the Attorney General's office; or 2) employ outside legal counsel should the Commission's

in-house counsel be precluded from participating or be unable to participate in a matter. Previously, the Commission could only ask the Attorney General for representation if in-house counsel had a conflict of interest under NRS 281.501.

Finally, AB 64 amended the provisions of NRS 281.551(6) relating to ‘willful’ violations of the Ethics in Government Law. This statute provided that ethics violations by public officers or public employees were not willful if said public officer or employee:

1. Relied in good faith upon the advice of the legal counsel retained by the public body or agency;
2. Was unable, through no fault of his own, to obtain an opinion from the Commission before the action was taken; and
3. Took action which was not contrary to a prior published opinion of the Commission.

The current statutory provisions resulted in the Commission, upon finding a violation of ethics law, deliberating regarding the willfulness of the violation. As amended, NRS 281.551(6) leaves the three criteria outlined above in statute but shifts the burden from the Commission to the public officer or public employee to establish that all three such actions were taken. Now, a public officer or employee must establish *by sufficient evidence* that he satisfied all three requirements to overcome the new statutory presumption is that his actions are willful.

The bill became effective upon by the Governor on June 14, 2005.

### **Assembly Bill 499**

Assembly Bill 499 repeals the provisions of the campaign practices act. The act, found mainly in NRS 281.477 and NRS 294A.345, allowed the Commission to accept complaints against a person who:

1. Caused to be published a false statement of fact concerning a candidate;
2. Acted with actual malice in causing the false statement to be published;
3. Acted with the intent to impede the success of the campaign of a candidate; and
4. Impeded the success of the campaign of a candidate.

NRS 294A.346 contained similar provisions regarding persons impeding the success of a ballot measure. Violations were subject to up to a \$5,000 civil penalty.

On March 26, 2005, the U.S. District Court in Las Vegas rendered a decision regarding the constitutionality of the provisions of the campaign practices act in the matter of *The Nevada Press Association, et. al, v. Nevada Commission on Ethics, et. al*. In his decision, Judge Lloyd George declared that violations of NRS 294A.345 vis-à-vis the process established pursuant to NRS 281.477 violate the due process guaranteed under the 14th Amendment of the U.S Constitution. Therefore, the statute was declared unconstitutional on its face, and the Commission was enjoined from enforcing the statute.

AB 499 repeals all statutory provisions relating to the campaign practices act effective October, 1, 2005, and is not applicable to complaints submitted prior to October 1, 2005 or to the jurisdiction, duties, powers, or proceedings of the Commission relating to such conduct.

## *Assembly Bill 500*

Assembly Bill 500 makes numerous revisions relating to elections law and the election process in Nevada. However, AB 500 also revises the definition of a 'public officer' under the Nevada Ethics in Government Law.

Presently, NRS 281.4365 defines 'public officer' as 'a person elected or appointed to a position which is established by the Constitution of the State of Nevada, a statute of this state or an ordinance of any of its counties or incorporated cities and which involves the exercise of a public power, trust or duty.' NRS 281.4365 further defines 'the exercise of a public power, trust or duty' as persons whose responsibilities include:

- (a) Actions taken in an official capacity which involve a substantial and material exercise of administrative discretion in the formulation of public policy;
- (b) The expenditure of public money; and
- (c) The enforcement of laws and rules of the State, a county or a city.

AB 500 amends the definition of public officer such that the exercise of a public power, trust or duty now includes the *administration* of laws and rules of the State, a county or a city rather than the *enforcement* of these laws and rules. The amendment appears to broaden the definition of public officers as compared to the previous language, and will likely require more persons appointed to public office to file a financial disclosure statement with the Commission.

The bill becomes effective October 1, 2005.